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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,233	08/03/2001	Simon Erani	4061.007	8232

7590

04/24/2003

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EXAMINER

CRIARES, THEODORE J

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 04/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/922,233

Applicant(s)

ERANI, SIMON

Examiner

Theodore J. Criares

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

CLAIMS 1-5 ARE PRESENTED FOR EXAMINATION

DETAILED ACTION

The use of the trademark VITAZYME™ has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen et al. (5,560,917) in view of Brooks Industries, Inc sales pamphlet-VITAZYME™ Protien Bonded Vitamins (Brooks).

Claim 1 claims a combination of

- a. Retinyl Palmitate Polypeptide; (A form of Vitamin A)
- b. Ascorbylmethylsilanol Pectinate; (A form of Vitamin C)
- c. Tocopheryl Polypeptide; (A form of Vitamin E)
- d. Cholecalciferol Polypeptide; (A form of Vitamin D) and

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e. Niacinamide Polypeptide (A form of Vitamin B₃).

Claim 3-4 claims composition comprising two, three and four components selected from the group consisting of a., b., c, d, and e.

Claim 2 depends from claim 1 and recites the ratio of the vitamins of claim 1.

Cohen et al teach at column , lines 20-66 free-radical scavengers are beneficial in skin compositions to reduce skin cell damage. Vitamins A, C, and E polypeptides (applicant's vitamins a., c. e.) are taught as examples of free radical scavengers and the palmitate salt of retinol. The generic use of ascorbyl polypeptide (applicant's vitamin b.) is also taught in this reference at column 5, line 60 as a free-radical scavenger). The difference between applicant's claims and Cohen et al is that the cholecalciferol polypeptide (d) is not taught in this reference. However, one of ordinary skill in the art would have been motivated to incorporate this form of Vitamin D since at page 2 of Brooks, VITAZYME DTM confers moisturizing properties to the skin. This reference also teaches at page 1 that the skin formulation of the vitamins taught therein (which are applicant's vitamins a., c. and e. can be varied with the Vitamins set forth therein. In other words one can have a formulation containing two three or four of the vitamins taught therein.

One of ordinary skill in the art would have been motivated to combine the agents as taught by the references to form a composition to be applied to the skin with a reasonable expectation of success. Applicant has not established a surprising and unexpected effect in the claimed compositions.

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Claim 2 is rejected since it reads on rejected claim 1. However, the prosecution of this application would be advanced if a declaration establishing a surprising and unexpected result from the use of applicant's compositions and claims within the scope of the data are presented.

The test of obviousness is "whether the teachings of the prior art, taken as a whole, would have made obvious the claimed invention." In re Gorman, 933 F.2d 982, 18 USPQ 2d 1885, (Fed. Cir. 1991). In view of the above rejection it is deemed that the evidence presented has established a prima facie case of obviousness is presented since the agents claimed by the applicant's claims are taught in the prior art taken as a whole.

None of the claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Criares whose telephone number is 308-4607. The examiner can normally be reached on 6:30 A.M. to 5:00P.M. Monday through Thursday.

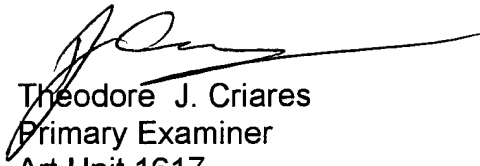
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-6897 for regular communications and N/A for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

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Theodore J. Criares
Primary Examiner
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tjc
April 23, 2003